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Administration of justice at the United Nations

Letter dated 3 November 2015 from the President of the General Assembly addressed to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter from the Chair of the Sixth Committee, Eden Charles, on the administration of justice at the United Nations (see annex).

(*Signed*) Mogens **Lykketoft**

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Annex

I have the honour to write to you with regard to agenda item 143, "Administration of justice at the United Nations".

It will be recalled that at its 2nd plenary meeting, on 18 September 2015, the General Assembly, upon the recommendation of the General Committee, referred the agenda item to both the Fifth and Sixth Committees. In paragraph 49 of resolution 69/203, the Assembly invited the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.

The Sixth Committee considered the item at its 16th plenary meeting, on 26 October 2015, as well as in informal consultations, held on 27, 28 and 30 October. In addition to considering the report of the Secretary-General on the administration of justice at the United Nations (A/70/187), as well as the report of the Secretary-General on the amendment to the rules of procedure of the United Nations Appeals Tribunal (A/70/189), the Committee had before it the report of the Internal Justice Council (A/70/188), which included annexes containing the memorandum submitted by the judges of the United Nations Dispute Tribunal and the letter submitted by the judges of the United Nations Appeals Tribunal, and the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/70/151). The report of the Internal Justice Council on the Appointment of judges of the United Nations Appeals Tribunal and of the United Nations Dispute Tribunal (A/70/190) under agenda item 114 (g) and (h) relating, respectively, to the appointment of the judges of the United Nations Dispute Tribunal and the appointment of the judges of the United Nations Appeals Tribunal, was also available during the informal consultations. Delegations were grateful to the representatives of the Secretariat and of the Internal Justice Council who were available to provide answers and clarifications during the informal consultations on 27 and 28 October.

I should draw your attention to a number of specific issues related to the legal aspects of those reports, as discussed in the Sixth Committee.

Delegations thanked the Secretary-General for his comprehensive report submitted pursuant to resolution 69/203, as well as the report on the activities of the Office of the United Nations Ombudsman and Mediation Services. Delegations took note of (a) the information provided with respect to proactive case management by Dispute Tribunal judges in the promotion of settlement of disputes and the successful settlement of disputes within the formal system; (b) information provided with respect to the implementation of the amendments to the statutes of the Dispute Tribunal and the Appeals Tribunal; (c) data provided with respect to cases within the formal internal justice system and the observations made with respect to the data and emerging trends; (d) information provided with respect to the voluntary supplemental funding mechanism for additional resources for the Office of Staff Legal Assistance; (e) information provided with respect to incentives for staff not to opt out of the voluntary supplemental funding mechanism; (f) information provided with respect to incentives for volunteers for the Office of Staff Legal Assistance; (g) information provided with respect to the issuance of further lessons-learned guides, including on performance management; (h) information provided with respect to the accountability of all individuals where violations of the

Organization's rules and procedures have led to financial loss and the action taken with respect thereto; (i) progress made in the implementation of recommendations to address systemic and cross-cutting issues contained in the report of the Secretary-General on the activities of the Office of the Ombudsman and Mediation Services; and (j) information provided in the report of the Secretary-General (A/70/187, annex VI) concerning the issue of compensation for moral damages. The Committee took note of efforts reported by the different parts of the system of administration of justice to inform staff about available sources of legal and other advice and about the possibilities to secure representation in the system. Delegations also urged the Secretariat to continue to provide information on the role and functioning of the various parts of the system and the possibilities it offered to address work-related complaints. The Committee encouraged all parties to a work-related dispute to make all efforts to settle it early on in the informal system, without prejudice to the right of each staff member to submit a complaint for review in the formal system.

Delegations also expressed gratitude for the reports of the Internal Justice Council.

On the issue concerning the privileges and immunities of the judges of the Tribunals (see A/70/187, annex IV), delegations supported the proposal by the Secretary-General for the harmonization of the privileges and immunities of the judges and the changes to the relevant articles of the respective statutes. The proposal was consistent with the views expressed by the Committee in 2014 (see A/C.5/69/10). Delegations reiterated their understanding that the proposal would not entail a change of current rank or conditions of service of the judges. Having reviewed the proposal by the Secretary-General (see A/70/187, annex IV), the Committee recommends approving the following changes to the relevant articles of the respective statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal:

Statute of the Dispute Tribunal

Article 4, new paragraph 12

"12. The judges of the Dispute Tribunal shall be considered officials other than Secretariat officials of the United Nations under the Convention on the Privileges and Immunities of the United Nations."

Statute of the Appeals Tribunal

Article 3, new paragraph 12

"12. The judges of the Appeals Tribunal shall be considered officials other than Secretariat officials of the United Nations under the Convention on the Privileges and Immunities of the United Nations."

In respect of the amendment to the rules of procedure of the United Nations Appeals Tribunal (see A/70/189, annex), delegations noted that on 16 February 2015, in accordance with article 32, paragraph 1, of its rules of procedure, the United Nations Appeals Tribunal adopted an amendment to article 8 (Appeals), paragraph 6, of its rules of procedure, which is provisionally applied. Pursuant to article 32, paragraph 2, of the rules of procedure of the United Nations Appeals Tribunal, the Committee recommends approval of the following amendment to the rules of procedure of the United Nations Appeals Tribunal:

Rules of procedure of the United Nations Appeals Tribunal

Article 8 (Appeals)

"6. The filing of an appeal shall suspend the execution of the judgement or order contested."

Delegations considered and welcomed the refined proposal of the Secretary-General with respect to the mechanism for addressing potential complaints regarding alleged misconduct or incapacity of the judges of the Tribunals (see A/70/187, annex V), as well as the clarifications provided for by the Secretariat. The Committee recommends approving the mechanism with the following amendment in the first sentence of paragraph 5:

"The types of conduct that would warrant the sanctioning of a judge are violations of the standards established in the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal approved by the General Assembly in resolution 66/106."

The mechanism, as amended, appears as an appendix to the present letter.

Concerning the proposal of the Secretary-General to extend the mandate of the ad litem judges until December 2016, delegations acknowledged that the extension of the positions of three ad litem judges — which would keep the number of full-time judges working on the current caseload of the Dispute Tribunal to six — was a necessary temporary measure aimed at ensuring the continued delivery of justice. The Committee further acknowledged that the issue is being covered by the interim assessment, which, as proposed by the Secretary-General, also addresses systemic issues for the operation of the system of administration of justice and resource requirements.

The Sixth Committee expressed gratitude for the information provided by the Secretary-General, at the request of the General Assembly, in his report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/70/151) regarding the handling of complaints by non-staff personnel. Delegations recalled that the Sixth Committee had repeatedly highlighted that the United Nations should ensure that effective remedies were available to all categories of United Nations personnel, including non-staff personnel, and had recommended that the question be addressed in the envisaged interim assessment. Delegations recalled that the General Assembly had requested the Secretary-General to promulgate the revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services by the end of December 2014 at the latest. They urged the Office of the Ombudsman and Mediation Services to publish its revised terms of reference.

With regard to the ongoing interim independent assessment, delegations looked forward to the report of the panel of experts to be submitted for consideration at the seventy-first session. Delegations took note of the recommendations made by the Internal Justice Council in its report (A/70/188), and highlighted their recommendation that better guidelines on the award of moral damages would be of assistance to the Dispute Tribunal and the parties, while also taking into account recent amendments to the statute of the Dispute Tribunal. Delegations also recalled their comments regarding the terms of reference for the panel of experts made during the sixty-ninth session (A/C.5/69/10). In addition,

delegations would welcome the views of the panel of experts on the mechanism for addressing potential complaints regarding alleged misconduct or incapacity of the judges of the Tribunals, in particular on the amended paragraph 5. The Committee proposes to revert to this matter in 2016. Moreover, delegations would welcome the views of the panel of experts on the protection of whistle-blowers in the United Nations system. In this regard, delegations would be interested in a review of options on the protection of whistle-blowers and their advantages and disadvantages. Recalling previous proposals during the drafting of the statute of the United Nations Dispute Tribunal, delegations would also welcome the views of the panel of experts on ways and means to facilitate the settlement of disputes. Another item of consideration for the panel of experts relates to the handling of large numbers of applications pertaining to a single action of the Organization. Delegations would also welcome the views of the panel of experts on how United Nations Appeals Tribunal staffing can most effectively be configured to meet demands.

In respect of a single code of conduct for all representatives, delegations noted that it was expected to be ready for consideration by the General Assembly during its seventy-first session. Delegations noted that this matter had been discussed for several years and expressed regret regarding the delays in its finalization.

The Committee recommended that the General Assembly include the item entitled "Administration of justice at the United Nations" in the provisional agenda of its seventy-first session.

It would be appreciated if the present letter could be brought to the attention of the Chair of the Fifth Committee and be circulated as a document of the General Assembly, under agenda item 143, "Administration of justice at the United Nations".

(*Signed*) Eden **Charles**
Chair of the Sixth Committee
at the seventieth session
of the General Assembly

Appendix

Mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

1. Allegations regarding misconduct or incapacity of a judge should be made, in writing, directly to the President of the relevant Tribunal. In the event that a complaint is against a serving President, it shall be addressed to the most senior judge after the President ("receiving judge").

2. The complainant shall receive a written acknowledgement of receipt of the complaint.

3. A complaint shall not be receivable unless it is received within 60 days of the date on which the alleged misconduct or incapacity took place, except as set out in paragraph 4 below.

4. By way of a transitional measure only, a complaint may be filed against a judge of either Tribunal related to alleged misconduct or incapacity during the period from the date of the General Assembly's approval of the mechanism for addressing possible misconduct of judges in resolution 67/241 of 24 December 2012 to the date of approval of this mechanism, provided such complaint is filed within 60 days of the date of such approval.

5. The types of conduct that would warrant the sanctioning of a judge are violations of the standards established in the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal approved by the General Assembly in resolution 66/106. The types of incapacity that would warrant removal from the Dispute Tribunal or the Appeals Tribunal would involve either a physical or a mental condition that would prevent a judge from performing his or her judicial functions and that cannot be addressed by a reasonable accommodation of such condition.

6. Consistent with the principles of the independence of the administration of justice and judicial independence, judicial decisions are not matters of conduct and shall not be the subject of a complaint under this mechanism. Recusal — whether a particular judge should preside over a case or sit on a hearing — cannot be dealt with under the complaints mechanism.[a] A complaint is not an appeal.

7. As a general rule, filed complaints relating to a pending case will not be dealt with until the case is disposed of.

8. Complaints regarding the misconduct or incapacity of a judge shall contain:

(a) The name and address of the complainant;

(b) The date and location of the alleged misconduct;

(c) The name of the judge against whom the complaint is made;

(d) A detailed description of the alleged misconduct or incapacity, including the date on which it took place;

[a] Recusal of judges of the Dispute Tribunal or the Appeals Tribunal is covered in articles 4.9 and 3.9 of the respective statutes of the Tribunals.

(e) Any other relevant information, including the names and contact details of witnesses, if any, to the event complained of, and documentary evidence if available;

(f) The signature of the complainant and date of submission.

9. A complainant may be represented by another person, at his or her own expense.

10. Upon receipt of a complaint, the President or receiving judge shall review it in order to determine what action, if any, is warranted.

11. If the President or receiving judge decides that no further action is appropriate, he or she will so inform the complainant in writing, within seven days, providing reasons for the decision and sending a copy to the judge against whom the complaint was made ("judge concerned").

12. If the President or receiving judge decides that further action is warranted, he or she shall provide the judge concerned with a copy of the complaint and any supporting documentation thereto and invite him or her to provide comments in writing within two weeks, unless the President or receiving judge grants an extension of time to do so.

13. If the complaint is informally resolved to the satisfaction of the parties at any time during its pendency before the President or receiving judge, the complainant will inform the President or receiving judge accordingly and the complaint will be closed.

14. If, following a preliminary review, the President or receiving judge is of the view that further inquiry is appropriate, the complainant will be so advised.

15. If the President or receiving judge is of the view that there are sufficient grounds to warrant a formal investigation, he or she shall establish a panel of outside experts to investigate the allegations and report its conclusions and recommendations to the President or receiving judge. The panel of experts shall comprise three members who shall be judges, former judges or other eminent jurists. When appointing the panel, the President or receiving judge shall take into account geographical distribution and gender balance.

16. The President or receiving judge shall establish the terms of reference for the panel of experts. Such terms of reference should ensure that the judge concerned is accorded all requisite due process safeguards.

17. The judge concerned may be represented by another person, at his or her own expense.

18. The panel of experts shall complete their inquiries and report in writing to the President or receiving judge within three months of the date of referral of the complaint to the panel.

19. All judges of the relevant Tribunal, with the exception of the judge concerned, shall review the report of the panel and recommend one of the following courses of action:

(a) If a majority of the judges are of the opinion that the complaint is not well founded, the complaint shall be closed and the President or receiving judge shall advise the judge concerned and complainant in writing;

(b) If a majority of the judges are of the opinion that the complaint is well founded but the removal of the judge concerned is not warranted, the President or receiving judge shall take such corrective action as he or she deems appropriate;

(c) If the judges are of the unanimous opinion that the complaint is well founded and that the matter is of sufficient severity to suggest that the removal of the judge concerned is warranted, they shall so advise the President or receiving judge of the Tribunal. The President or receiving judge shall report the matter to the General Assembly, through the Internal Justice Council, to request the removal of the judge concerned. The judge concerned will be advised of such recommendation as soon as possible by the President or receiving judge;

(d) If a majority of the judges are of the opinion that the complaint is well founded and the matter is of sufficient severity to suggest that the removal of the judge concerned is warranted, the President or receiving judge shall take such corrective action as he or she deems appropriate. The judge concerned shall be given an opportunity to make final written representations regarding the sanction proposed;

(e) When the process described in this paragraph is complete, the complainant will be advised of the disposition of his or her complaint.

20. The process of review of the complaint up to the final disposition thereof shall be confidential. If the final disposition is that set out in paragraph 11, 13 or 19 (a), the name of the judge concerned shall continue to remain confidential following completion of the process.

21. The respective Presidents of the Dispute Tribunal and the Appeals Tribunal shall submit an annual report to the General Assembly on the disposition of complaints through the Internal Justice Council.

22. This mechanism shall come into effect upon approval by the General Assembly.